

**SECTION C**

**ALL-AGENCY MEMORANDA NOS. 130 AND 131**

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



MAR 17 1978

ALL AGENCY MEMORANDUM NO. 130

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE  
DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA  
ADMINISTRATOR

SUBJECT: Application Of The Standard Of Comparison  
"Projects Of A Character Similar" Under The  
Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth present policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76-11, dated January 27, 1977) stated:

The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid.

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Generally construction projects are classified as either Building, Heavy, Highway or Residential. 1/ Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. Contracting agencies should utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply. Note, however, that the descriptions and illustrations are guides. Contracting agencies should seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77-23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

#### BUILDING CONSTRUCTION

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade

1/ Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work which is a part of a building project would not generally be separately classified. Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alterations and additions to buildings  
Apartment buildings (5 stories and above)  
Arenas (enclosed)  
Auditoriums  
Automobile parking garages  
Banks and financial buildings  
Barracks  
Churches  
City halls  
Civic centers  
Commercial buildings  
Court houses  
Detention facilities  
Dormitories  
Farm buildings  
Fire stations  
Hospitals  
Hotels  
Industrial buildings  
Institutional buildings  
Libraries  
Mausoleums  
Motels  
Museums  
Nursing and convalescent facilities  
Office buildings  
Out-patient clinics  
Passenger and freight terminal buildings  
Police stations  
Post offices  
Power plants  
Prefabricated buildings  
Remodeling buildings  
Renovating buildings  
Repairing buildings  
Restaurants  
Schools  
Service stations  
Shopping centers  
Stores  
Subway stations  
Theaters  
Warehouses  
Water and sewage treatment plants (buildings only)

### RESIDENTIAL CONSTRUCTION

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four(4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

#### Examples

Town or row houses  
Apartment buildings (4 stories or less)  
Single family houses  
Mobile home developments  
Multi-family houses  
Married student housing

### HEAVY CONSTRUCTION

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

#### Examples

Antenna towers  
Bridges (major bridges designed for commercial navigation) 2/  
Breakwaters  
Caissons (other than building or highway)  
Canals  
Channels  
Channel cut-offs  
Chemical complexes or facilities (other than buildings)  
Cofferdams  
Coke ovens  
Dams  
Demolition (not incidental to construction)  
Dikes  
Docks  
Drainage projects

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2/ Major bridges contain elements of both heavy and highway construction.  
See WAB Case No. 77-2 (October 21, 1977)

Dredging projects  
Electrification projects (outdoor)  
Flood control projects  
Industrial incinerators (other than building)  
Irrigation projects  
Jetties  
Kilns  
Land drainage (not incidental to other construction)  
Land leveling (not incidental to other construction)  
Land reclamation  
Levees  
Locks, waterways  
Oil refineries (other than buildings)  
Pipe lines  
Ponds  
Pumping stations (prefabricated drop-in units - not buildings)  
Railroad construction  
Reservoirs  
Revetments  
Sewage collection and disposal lines  
Sewers (sanitary, storm, etc)  
Shoreline maintenance  
Ski tows  
Storage tanks  
Swimming pools (outdoor)  
Subways (other than buildings)  
Tipples  
Tunnels  
Unsheltered piers and wharves  
Viaducts (other than highway)  
Water mains  
Waterway construction  
Water supply lines (not incidental to building)  
Water and sewage treatment plants (other than buildings)  
Wells

#### HIGHWAY CONSTRUCTION

Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

#### Examples

Alleys  
Base courses  
Bituminous treatments  
Bridle paths  
Concrete pavement  
Curbs  
Excavation and embankment (for road construction)

Fencing (highway)  
Grade crossing elimination (overpasses or underpasses)  
Guard rails on highway  
Highway signs  
Highway bridges (overpasses; underpasses; grade separation)  
Medians  
Parking lots  
Parkways  
Resurfacing streets and highways  
Roadbeds  
Roadways  
Runways  
Shoulders  
Stabilizing courses  
Storm sewers incidental to road construction  
Street Paving  
Surface courses  
Taxiways  
Trails

In applying these guidelines contracting agencies are reminded that they have the authority only in the first instance to designate the appropriate wage schedule(s) from the Federal Register, and to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. Any questions regarding the application of the guidelines set forth in this memorandum to a particular project or any disputes regarding the application of the wage schedules are to be referred to the Wage and Hour Division for resolution, and the instructions of the Wage and Hour Division are to be observed in all instances. Furthermore, where multiple schedules are issued by the Wage and Hour Division, they must be utilized in the contract specifications unless the agency requests and receives a change in the wage determination from the Wage and Hour Division. To ensure that appropriate schedules are issued, contracting agencies are advised to provide the Wage and Hour Division in their requests for wage determinations with a sufficiently specific description of the project to be able to determine its character.

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



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ALL AGENCY MEMORANDUM NO. 131

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE  
DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA  
ADMINISTRATOR *[Signature]*

SUBJECT: Clarification of All Agency Memorandum No. 130

The purpose of this memorandum is to clarify Memorandum No. 130, dated March 17, 1978. Although the Wage and Hour Division has received a positive reaction from most contracting agencies who work regularly with the issues raised, some questions have arisen over specific aspects of the memorandum.

Memorandum No. 130 is intended to be a guide to categories of projects in a construction sense and is to be applied uniformly by the contracting agencies in the absence of specific direction on the wage determination or advice by the Wage and Hour Division. However, the Wage and Hour Division is aware that in some circumstances the category of a project may appear to be unclear or a literal application of the guidelines may be inappropriate. For example, questions frequently arise over pumping stations, which may vary greatly in sophistication and construction techniques. Therefore, if the contracting agency has any questions regarding application of the guidelines in a specific case, or if a question is raised with the agency by interested parties, the issue of application of the wage rate schedules should be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available of area practice regarding wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's recommendation. Where the nature of the project in a construction sense is not clear, area practice regarding wages paid will be taken into consideration together with other factors such as construction techniques and classifications of workers required on the project. See WAB Case No. 77-23 (December 30, 1977).

Questions have also arisen regarding the circumstances in which multiple schedules of wage rates are issued for a project which includes construction items that in themselves would be



different categories of construction. Because of the complexities in application of multiple schedules, the contracting agency should consult with the Wage and Hour Division whenever it appears that more than one schedule of rates is appropriate for a project, unless the wage decision(s) as issued indicates that multiple schedules are applicable.

Generally, multiple schedules are issued if the construction items are substantial in relation to project cost -- more than approximately 20 percent. Only one schedule is issued if construction items are "incidental" in function to the over-all character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category. Note, however, that 20 percent is a rough guide. For example, when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not specifically amount to 20 percent of the total project cost.

Although the example given is that of incidental paving and utilities, the same principles are applied to other categories, such as building construction on a heavy or highway project. Thus, in a recent case, the Wage and Hour Division deleted the building schedule when it learned that a small building under a contract primarily for runway construction was approximately 4 percent of project cost. Another example of general interest is the applicability of the building schedule to a building in a rest area of a highway. In this situation, applying the principles of MARTA, WAB Case No. 75-5, for extensive projects, the project for comparison purposes is the rest area itself, rather than the entire highway.

These principles regarding incidental construction are not in conflict with the Wage and Hour Division's recognition in certain circumstances (WAB Case No. 77-19) of a clearly established practice of paying different wage rates on specific portions of building projects. For example, different rates may be paid for incidental paving and utilities than are paid in the construction of buildings on building projects. These projects are building projects, and the wage rates issued by the Wage and Hour Division for incidental paving and utilities reflect wages paid on such work on building projects.

Contracting agencies are reminded of their responsibility to advise contractors on the application of multiple wage schedules issued by the Wage and Hour Division or obtained by the agency from the Federal Register. If any questions arise regarding application of the schedules to the project in accordance with these guidelines, or if it appears that a

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wage schedule may have been issued in error, a ruling should be requested from the Wage and Hour Division. On these issues, as in all other matters in the administration of the Davis-Bacon and related acts, we will continue to work cooperatively with the contracting agencies. For convenience, Memorandum No. 130 is attached.

Attachment